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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

BAY AREA CONSORTIUM FOR
QUALITY HEALTHCARE,

Plaintiff and Appellant,

v.

ALAMEDA COUNTY,

Defendant and Respondent.

A157789

(Alameda County Super. Ct.
No. RG15763430)

Bay Area Consortium for Quality Healthcare (BAC) appeals after the trial court sustained without leave to amend the demurrer of respondent Alameda County (the County) to BAC's third amended complaint (TAC) for damages, which included allegations that the County had not fully paid BAC for health care services it had provided to indigent patients in Alameda County between 2000 and 2008, pursuant to contracts with the County. On appeal, BAC contends the court erred when it sustained the demurrer without leave to amend on the ground that the TAC was not filed within the required time period set forth in Code of Civil Procedure section 472b¹ for filing an amended

¹ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

complaint after reversal on appeal of an order sustaining a demurrer without leave to amend. Although the trial court based its ruling solely on the timeliness of the filing of the TAC, BAC further contends the court erred in sustaining the demurrer because the TAC stated facts sufficient to constitute any of the three causes of action alleged against the County. We shall affirm the trial court's order.

FACTUAL AND PROCEDURAL BACKGROUND

BAC's TAC against the County and a second defendant, Alameda Alliance for Health Care, Inc. (Alameda Alliance) alleged the following facts relevant to its claims against the County.² From 1999 to 2008, BAC, a community not-for-profit health and social services agency, provided health care services for indigent and Medicaid-based patients under California's Department of Human Services' targeted case management (TCM) program, which was administered by the County. The County failed to accurately pay BAC for those services under contracts between the parties from 1999 to 2008, and ultimately terminated BAC's contract, ostensibly for nonperformance or failure to meet the contract requirements. The value of the services BAC provided exceeded \$2.8 million for the period of July 1, 2002 to June 30, 2008, as indicated in a financial audit report completed by the California Financial Audits Unit (audits unit) in 2010, which was made known to BAC in 2011.

In 2008, while BAC employees were attending a training sponsored by the TCM program, an attorney representing the State of California presented a report on Medicaid fraud and wrongful billing.

² Alameda Alliance was not involved in the demurrer proceedings at issue and is not a party to this appeal.

The examples presented by the attorney “mirrored the concerns/complaints [BAC] had expressed to [the] County.” During the meeting, the attorney and representatives from the audits unit offered to meet with anyone who had questions about their claims reimbursement processes. When a BAC employee stood up and requested assistance with a review of BAC’s claims and reimbursement process, County representatives told the employee “to not ask questions and if [BAC’s] employee asked questions or participated in any audit, [BAC] would regret it.”

BAC’s contract to provide health services under the TCM program was terminated during the next contract cycle, followed by termination of other health services contracts BAC had held for more than a decade because, as the County informed BAC employees, “‘they did not play by their rules.’” BAC “believes that [the] County knowingly used an improper claims/reimbursement process that resulted in fraudulent claims submission to acquire federal funds on the TCM and most other Medicaid programs resulting in[,] as [BAC] was informed[,] many millions of dollars of federal dollars being falsely kept by [the] County.”

In 2009 through 2010, after the termination of BAC’s health services contracts with the County, which were worth approximately \$2 million, BAC asked the County to meet and discuss the termination and other related concerns, including the status of patients who had been left without services after the contracts were terminated. The County and its general counsel refused to meet with BAC and, instead, informed BAC in writing that it should wait until the audits unit completed its report.

In 2011, BAC learned that the TCM financial audit report had been completed, that the auditors had started with a review of the first years of BAC's contract with the County to provide TCM program health services, from July 2002 to June 2004, and that the audits unit had found that the value of BAC's services for that period was \$1,024,408.47. During the 2010 and 2011 communications with the audits unit, BAC was directed to work with the County to obtain the report and resolution of its claims.

On October 28, 2011, BAC wrote to the County requesting payment of the \$1,024,408.00 and other money owed to BAC. The County refused to pay the money, claimed it was appealing the audit, and threatened BAC that if it complained about the lack of payment before the appeal was decided and the County had to pay BAC and/or the state or federal government, it "would make sure the funds were taken from [BAC's] future contracted funds and threatened that [it] would create/falsify a situation in which [BAC] would owe [the County]." The County further stated that BAC would have to wait for three or four years for the audit appeal to be decided.

In the early spring of 2014, BAC's employee called the audits unit to find out the status of the County's appeal. The employee learned that the audit had been finalized and that, in addition to the assessment for fiscal years 2001 to 2003, it had been determined that the County owed BAC additional money for fiscal years 2004 to 2006. BAC's employee also learned that its services provided under the contract with the County for the years 2006 to 2008 would be reviewed in the future, but the audit for those years, as for the previous years, would take many years to complete.

Around June 2014, BAC wrote to the County requesting payment of all outstanding money the County owed BAC. From March to August 2014, BAC had several meetings with County officials, but the issues were not resolved.

On October 29, 2014, BAC made a claim against the County and on December 9, the County denied the claim.³

Due to the failure of the County and defendant Alameda Alliance to pay BAC, BAC could not pay its bills and on August 4, 2014, it filed for Chapter 11 Bankruptcy protection from its creditors. The bankruptcy court ordered BAC to vacate its Berkeley premises, and BAC began using its other locations to provide healthcare to its patients. On March 18, 2015, the bankruptcy court dismissed BAC's bankruptcy petition.

In December 2014, the County informed BAC that it would continue, for fiscal year 2015, the ongoing contract with BAC to treat HIV/AIDS patients. The renewal of this contract "was based on [BAC's] continued excellent performance with providing health care services to its patients in Alameda County," as stated in the County's January 2015 report.

In February 2015, unbeknownst to BAC, "defendants" started contacting BAC's patients, informing them that BAC was out of business, and directing them to other health care providers.⁴ After

³ In its TAC, BAC included the statement that [t]hese claims are exempt from the Government Claim Requirement . . . under Government Code section 905(e)."

⁴ Although BAC refers to "defendants" in its TAC when making these allegations regarding events occurring in February 2015,

BAC contacted defendants, they terminated BAC's contracts. On February 20, BAC received a letter from defendants stating that they would continue to transfer BAC's patients to other health care providers and that they had unilaterally terminated all contracts with BAC based on the fact that BAC had filed for Chapter 11 bankruptcy protection.

On March 23, 2015, BAC commenced this action against the County and Alameda Alliance for breach of contract and common counts based on the alleged failure to pay BAC for the health care services its employees provided to indigent patients in Alameda County.

On July 30, 2015, BAC filed a first amended complaint against both defendants, alleging nine causes of action. On January 7, 2016, the County filed a motion for judgment on the pleadings, which the trial court granted without leave to amend on February 2, 2016.

BAC appealed that order and on May 9, 2018, a panel of this Division held, *inter alia*, that (1) BAC had alleged facts bringing it within the exemption for the claim filing requirement of the Government Claims Act (Gov. Code, § 905, subd. (e)); (2) that, “[a]lthough it is less than clear which particular contract or contracts . . . BAC contends [the] County has breached,” BAC appeared to have stated a claim for breach of contract; and (3) the trial court abused its discretion when it granted the motion for judgment on the pleadings without leave to amend as to causes of action for breach of the covenant of good faith and fair dealing and common counts. (*Bay Area*

evidence in the record regarding these allegations, attached as exhibits to the TAC, relates only to Alameda Alliance's purported misconduct.

Consortium for Quality Health Care v. Alameda County (May 9, 2018, A148430) [nonpub. opn.].) We therefore reversed the judgment as to the causes of action for breach of contract, breach of the covenant of good faith and fair dealing, and common counts, and remanded the matter to the trial court with directions to give BAC the opportunity to amend its complaint to plead its excuse for failure to comply with the Government Claims Act and to amend its causes of action for breach of the covenant of good faith and fair dealing and common counts. (*Bay Area Consortium for Quality Health Care, supra*, A148430.)

On September 6, 2018, BAC filed its TAC, which included three causes of action against both the County and Alameda Alliance for breach of contract, breach of the covenant of good faith and fair dealing, and common counts.⁵

On October 10, 2018, the County filed a demurrer to the TAC on the grounds that (1) BAC failed to timely file the TAC after the clerk of this court mailed the notice of remittitur, pursuant to Government Code section 472b; (2) all causes of action were barred by the relevant statute of limitations; (3) the third cause of action for common counts failed to state facts sufficient to constitute a cause of action because the County was protected by the doctrine of Sovereign Immunity; and (4) the second and third causes of action, for breach of the covenant of good faith and fair dealing and common counts, failed to state facts sufficient to constitute these causes of action because they sought the same relief as the breach of contract cause of action.

⁵ The TAC also included a fourth cause of action, against Alameda Alliance only, for trade libel.

On June 13, 2019, the trial court sustained the County's demurrer without leave to amend and dismissed the TAC with prejudice, as to the County only. The court based its ruling solely on BAC's failure to file its TAC within 30 days after the clerk of this court mailed notice of issuance of the remittitur, which violated section 472b.

On July 12, 2019, BAC filed a notice of appeal from the June 13 order.⁶

DISCUSSION

On appeal from the trial court's order sustaining a demurrer without leave to amend, "we examine the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory, such facts being assumed true for this purpose. [Citations.]" (*McCall v. PacifiCare of California, Inc.* (2001) 25 Cal.4th 412, 415.) When a demurrer "is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.' [Citations.]" (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

In the present case, the trial court based its order sustaining the demurrer without leave to amend on its finding that the TAC was not

⁶ On November 22, 2019, Division One of this District denied the County's motion to dismiss, which was based on BAC's lack of capacity, without prejudice. The court found that the County had not established that BAC had been suspended for failure to pay taxes. On May 29, 2020, Division One transferred the appeal to this Division because the prior appeal had been assigned to this Division. (See Cal. Rules of Court, rule 10.1000(b)(1)(A).)

timely filed, pursuant to section 472b,⁷ without addressing any of the other grounds alleged in the County’s demurrer. On appeal, BAC focuses primarily on this ground relied on by the trial court when it contends the trial court erred in sustaining the demurrer, but it also briefly argues against the other grounds on which the County based its demurrer.

We conclude the demurrer was properly sustained without leave to amend because all causes of action BAC has alleged against the County in the TAC were barred by the applicable statute of limitations. In light of this conclusion, we need not address the ground the trial court relied on for its order, i.e., that the TAC was untimely pursuant to section 472b, or other grounds the County raised in its demurrer. (See *City of Morgan Hill v. Bay Area Quality Management District* (2004) 118 Cal.App.4th 861, 870 [“As an appellate court, we generally review the trial court’s ruling, not the reasons it gave for that ruling”]; *Day v. Alta Bates Medical Center* (2002) 98 Cal.App.4th 243, 252, fn. 1 [“the law is clear that we may affirm a trial court judgment on any basis presented by the record whether or not relied upon by the trial court”]; see also Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2001) ¶¶ 8:214–8:217 [citing cases].)

⁷ Section 472b provides in relevant part: “When an order sustaining *a demurrer* without leave to amend is reversed or otherwise remanded by any order issued by a reviewing court, any amended complaint shall be filed within 30 days after the clerk of the reviewing court mails notice of the issuance of the remittitur.” (Italics added.)

The trial court found that even though this court had reversed the trial court’s *judgment on the pleadings*, rather than a demurrer, section 472b’s deadline for filing an amended complaint nonetheless applied.

Although BAC does not discuss in its briefing which statutes of limitations apply to the causes of action raised in its TAC, it does not dispute the County's statement that the statute of limitations for each of the three causes of action is four years, given that each cause of action is based on the County's purported breach of a written contract. (See § 337, subd. (a) [limitations period for "[a]n action upon any contract, obligation or liability founded upon an instrument in writing" is four years].) Rather, BAC's argument on this issue in its opening brief consists of the following three sentences: "The statute of limitations does not bar BAC's claims. Paragraphs 14 [to] 22 show that on October 28, 2011, BAC became aware of [the County's] refusal to pay its bills. Therefore, the statute of limitations for BAC's claims began to run on that day and BAC's claims are timely." To the extent that this statement that BAC "became aware of" the County's "refusal to pay its bills" on October 28, 2011 can be construed as an argument that the discovery rule applies here, we conclude, based on the facts pleaded in the TAC, that such an argument is without merit.

"Generally, a plaintiff must file suit within a designated period after the cause of action accrues. (Code Civ. Proc., § 312.) A cause of action accrues 'when [it] is complete with all of its elements'—those elements being wrongdoing, harm, and causation. [Citation.] [¶] [Our Supreme Court has] held that 'the infliction of appreciable and actual harm, however uncertain in amount, will commence the statutory period.' [Citation.]

"The most important exception to that general rule regarding accrual of a cause of action is the 'discovery rule,' under which accrual is postponed until the plaintiff 'discovers, or has reason to discover, the

cause of action.’ [Citation.] Discovery of the cause of action occurs when the plaintiff ‘has reason . . . to suspect a factual basis’ for the action. [Citations.] ‘The policy reason behind the discovery rule is to ameliorate a harsh rule that would allow the limitations period for filing suit to expire before a plaintiff has or should have learned of the latent injury and its cause.’ [Citation.]” (*Pooshs v. Philip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797–798 (*Pooshs*); see also *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110–1111 (*Jolly*) [“the limitations period begins once the plaintiff ‘ “ ‘has notice or information of circumstances to put a reasonable person *on inquiry*’ ” ’ ”]; accord, *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397–398 [Under *Jolly*, a plaintiff “need not know the ‘specific “facts” necessary to establish’ the cause of action; rather, he may seek to learn such facts through the ‘process contemplated by pretrial discovery’; but, within the applicable limitations period, he must indeed seek to learn the facts necessary to bring the cause of action in the first place—he ‘cannot wait for’ them ‘to find’ him and ‘sit on’ his ‘rights’; he ‘must go find’ them himself if he can and ‘file suit’ if he does”].)

Although breach of contract actions ordinarily accrue at the time of breach, the discovery rule “may be applied to breaches which can be, and are, committed in secret and, moreover, where the harm flowing from those breaches will not be reasonably discoverable by plaintiffs until a future time.” (*April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 832.)

In the present case, as noted, BAC states that the facts set forth in paragraphs 14 to 22 of the TAC demonstrate that its action against the County is timely because the facts in the TAC demonstrate that

until October 28, 2011—the date it alleges it requested payment from the County for the TCM program health services it had provided—it was unaware of the County’s refusal to pay its bills. Therefore, according to BAC, that is the date the statute of limitations for its claims began to run, less than four years before it commenced the present action, on March 23, 2015.

We find, on the contrary, that the factual allegations in the TAC plainly show that BAC discovered the County’s alleged refusal to fully pay BAC long before October 2011, and that BAC “‘ha[d] reason . . . to suspect a factual basis’ for the action” as early as 2008, when it became concerned about the accuracy of the County’s payments for the health services it had provided. (*Pooshs, supra*, 51 Cal.4th at p. 797; see also *Jolly, supra*, 44 Cal.3d at p. 1114.)

In particular, paragraph 18 of the TAC alleged that, BAC’s “*request for the State of California to investigate its claims*” against the County “*was initiated in 2008*, while [BAC] employees attended a state of California TCM sponsored training” where a state attorney gave a presentation on Medicaid fraud and wrongful billing, the examples of which “*mirrored the concerns/complaints [BAC] had expressed to [the] County.*” (Italics added.) The TAC further alleged in paragraph 19 that “*the very next contract cycle*” the county terminated BAC’s contract to provide health services under the TCM program because BAC employees “‘*did not play by their rules.*’” (Italics added.) Then, in paragraph 20 of the TAC, BAC alleged that, “*in 2009 through 2010, [BAC] asked the County to meet and discuss the termination and other concerns.*” (Italics added.) The County refused these requests to meet and, instead, informed BAC in writing that it should wait until the

audits unit completed its report. Finally, BAC alleged in paragraphs 20 and 21 that it did not learn until 2011 of the results of the partial financial audit, which had been completed in 2010, and which found that the County owed BAC money for its TCM program work from 2002 to 2004.

BAC seems to believe that the statute of limitations was tolled until after it belatedly learned of the audit results, when it wrote to the County on October 28, 2011, requesting the money it believed it was owed under the contracts to provide TCM program health services. However, the allegations set forth in the TAC plainly show—as reflected in the italicized language in the paragraph above—that by 2008, BAC had “ ‘reason . . . to suspect a factual basis’ for the action. [Citations.]” (*Pooshs, supra*, 51 Cal.4th at p. 797; see also *April Enterprises, Inc. v. KTTV, supra*, 147 Cal.App.3d at p. 832.) Thus, the four-year limitations period began in 2008, when BAC “ ‘ ‘ ‘ha[d] notice or information of circumstances to put a reasonable person *on inquiry . . .*’ ” ’ [Citations.]” (*Jolly, supra*, 44 Cal.3d at pp. 1110–1111.)

In its reply brief, BAC asserts that, except for the timeliness issue under section 472b, the County’s arguments, including the statute of limitations argument, “are wrong because [this court] in the prior appeal considered all the issues raised by [the County] in its brief and reversed the lower court.” BAC is correct that, in the prior appeal, this court found that BAC “appears to have stated a claim for breach of contract.” (*Bay Area Consortium for Quality Health Care v. Alameda*

County, supra, A148430.)⁸ In that opinion, however, we did not have reason to address the statute of limitations issue.

We presume the statute of limitations claim was not raised in the prior appeal because, as we noted in that opinion, “[t]he causes of action in the first amended complaint were *based on alleged wrongful conduct ‘from 2012 to the present time.’* The claim BAC alleged it had presented to the County on October 29, 2014 charged ‘unlawful acts from January 1999 to January 2009.’ Consequently, these are not the acts giving rise to the causes of action in the [first amended complaint].” We further stated that BAC alleged in its first amended complaint that the County had breached contracts with BAC to provide health services “*between 2012 and the date of filing the complaint* by refusing to pay BAC, by making partial payments . . . and that BAC was damaged as a result.” We also stated: “*BAC’s claims for amounts due for services it provided under the TCM system appear to have preceded the time period covered by the first amended complaint and would therefore not be covered by this action.*” (*Bay Area Consortium for Quality Health Care v. Alameda County, supra*, A148430, italics added.)

Thus, our opinion in the prior appeal makes clear that the statute of limitations was not an issue because the causes of action against the County in the first amended complaint (which is not included in the

⁸ In that opinion, we directed the trial court to permit BAC to amend its complaint as to the breach of contract cause of action, as well as the breach of the covenant of good faith and fair dealing and common counts causes of action, both of which were based on the contract. (*Bay Area Consortium for Quality Health Care v. Alameda County, supra*, A148430.)

record in this appeal) “were based on alleged wrongful conduct ‘from 2012 to the present time,’ ” *not* on claims related to the health services BAC provided under the TCM program between 2000 and 2008, which underlie each of the three causes of action against the County in the TAC.⁹

In conclusion, BAC’s own factual allegations in the TAC show that by 2008, more than four years before it commenced this action in 2015, it discovered or had reason to discover its claims against the County for the alleged failure to fully pay for contracted health services provided between 2000 and 2008. The causes of action alleged against the County in the TAC are therefore time barred. (See § 337, subd. (a); *Pooshs, supra*, 51 Cal.4th at p. 797; *Jolly, supra*, 44 Cal.3d at p. 1114.) Moreover, considering all of the factual allegations in the TAC, we also find BAC has not shown a reasonable possibility that it could amend its complaint to state causes of action not barred by the applicable statute

⁹ Indeed, the only allegations in the TAC that do not relate to the services BAC provided to the County under the TCM program between 2000 and 2008 and the County’s failure to fully pay for those services concern Alameda Alliance and its alleged wrongful acts. In addition, the only contract with the County attached as an exhibit to the TAC that is relevant to the causes of action against the County is a contract covering services BAC provided from July 1, 2007 to June 30, 2008. Although BAC also attached a contract with the County for payment of \$74,500 to BAC for HIV/AIDS health services from March 1, 2014 to February 28, 2015, the TAC contains no allegations against the County related to this contract. Rather, the only reference to that contract in the TAC states that “[i]n December 2014, [the] County wrote to [BAC] and informed [BAC] that it would continue for fiscal year 2015, the on-going contract treating HIV/AIDS patients [BAC] had with [the County] for over a decade. This renewal of the contract was based on [BAC’s] continued excellent performance in providing health care services to its patients in Alameda County”

of limitations. (See *Zelig v. County of Los Angeles*, *supra*, 27 Cal.4th at p. 1126.)¹⁰

DISPOSITION

The trial court's order sustaining the County's demurrer to BAC's third amended complaint without leave to amend and dismissing that complaint with prejudice as to the County is affirmed. Costs on appeal are awarded to the County.

¹⁰ Having found that the demurrer was properly sustained without leave to amend on statute of limitations grounds, we will not address any of the alternative grounds set forth in the County's demurrer or relied on by the trial court. (See *City of Morgan Hill v. Bay Area Quality Management District*, *supra*, 118 Cal.App.4th at p. 870; *Day v. Alta Bates Medical Center*, *supra*, 98 Cal.App.4th at p. 252.)

Kline, P.J.

We concur:

Richman, J.

Miller, J.

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